REMARKS

Claims 22, 25-27 and 29-39 were previously pending in the application and remain unchanged. Reconsideration in view of the following remarks is respectfully requested.

The claims stand rejected under the cited prior art of record. Specifically, claims 22, 25, 29, 30 and 37-39 were rejected under 35 U.S.C. §103(a) over German Patent Publication DE 196 22 882 (DE '882) in view of German Patent Publication DE 196 47 567 (DE '567). Claims 26 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Bovenkerk (U.S. Patent No. 3,167,159). Claim 31 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Lampman et al. (U.S. Patent No. 4,746,177). Claims 32-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Japanese Patent Publication 2002-336180 (JP '180). Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567, JP '180 and Milocco (U.S. Patent No. 5,273,061).

Independent claim 37 recites a dishwasher including a washing container having a plurality of walls forming a volume in which items to be washed are retained, and a heat damping layer that at least partially surrounds the washing container. The heat damping layer has a variable thermal conductivity in that the heat damping layer can be adjusted between at least a first thermal conductivity value at which thermal conductivity through the heat damping proceeds at a first rate and a second thermal conductivity value at which thermal conductivity through the heat damping proceeds at a second rate different than the first rate.

The heat damping layer contains a closed capsule containing hydrogen in which at least one metal hydride grid is arranged, which can form a chemical compound with the hydrogen and thus bind the hydrogen. The capsule has a selected one of a pressed glass and a non-pressed glass fibre core that is

surrounded by a gastight jacket made of a selected one of a stainless steel sheet and a non-stainless steel sheet.

The heat damping layer is configured such that heating of the capsule has the effect that the hydrogen previously bound in the metal hydride grid is released, the pressure in the capsule increases, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is increased. The heat damping layer is further configured such that cooling of the capsule has the effect that the free hydrogen is resorbed with the metal hydride grid in a chemical compound, the pressure in the capsule drops, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is decreased. The heat damping layer is in heat-conducting contact with one of walls of the washing container and with an outer wall of the dishwasher.

Independent claim 32 recites a method for cleaning and drying items that have been disposed in a dishwasher, such as the dishwasher of claim 37. The heat damping layer can be adjusted between at least a relatively lower thermal conductivity value at which thermal conductivity through the heat damping layer proceeds at a first rate and a relatively higher thermal conductivity value at which thermal conductivity through the heat damping layer proceeds at a second rate higher than the first rate. The dishwasher also has a heat generating means for generating heat in the washing container. The method includes the steps of the heat damping layer containing the capsule; in coordination with the execution of a first section of a washing program during which thermal energy is built up in the washing container by the heat generating means, disposing the heat damping layer at the relatively lower thermal conductivity value by cooling the capsule such that the thermal energy built up in the washing container is substantially preserved in the washing container; and in coordination with the execution of a second section of the washing program during which a drying process is carried out, disposing the heat damping layer at the relatively higher thermal conductivity value by heating the capsule such that at least some of the thermal energy

present in the washing container succeeds to the surroundings via the heat damping layer.

The Office Action recognizes that DE '882 lacks a heat damping layer including a closed capsule containing hydrogen in which at least one metal hydride grid is arranged . . . . The Office Action contends, however, that DE '567 discloses this subject matter. The Office Action concludes that it would have been obvious to modify DE '882 "to utilize a heat damping layer as mentioned in DE '567 instead of the heat damping layer of DE '882 to have a vacuum insulation and enhance insulation efficiency." The Remarks from the Amendment filed May 19, 2009 are hereby reasserted and incorporated by reference.

In the "Response to Arguments" section in the Office Action, the Examiner cites *In re Keller* for the proposition that "the test for obviousness is not whether the features of the secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." An important component of this reasoning, however, is to determine what is the level of ordinary skill in the art. As noted in the May 19 Amendment, Applicant respectfully submits that the modifications proposed in the Office Action would not be readily determinable by those of ordinary skill in the art in view of the cited references. That is, in order to function properly, the panel in DE '567 is based on a gas tight, coarsely porous or coarsely structured insulating material that is cladded and evacuated. The panel includes an electrically heatable getter material inside the cladding. The getter in DE '567 is only operable in a vacuum. Applicant submits that it would not be readily apparent to those of ordinary skill in the art how such subject matter could even remotely suggest use in a wall of a dishwasher. With regard to predictability, the Supreme Court in *KSR* exempted such a modification from a conclusion of

obviousness if the means by which the modification was made would have been beyond the skill of one of ordinary skill in the art. Moreover, as discussed previously, the proposed combination could not possibly yield predictable results since the required getter material in DE '567 would not function in combination with the DE '882 structure, and in the same context, utilizing the entire wall panel in DE '567 (which the Office Action contends is not being done by the proposed combination, but Applicant notes any other modification would be entirely inoperable) is neither within the capability of those of ordinary skill in the art nor even remotely suggested by either reference.

Still further, claim 37 recites that the heat damping layer contains the closed capsule containing hydrogen . . . . In contrast, DE '882 describes that the intermediate reservoir 7 that receives and releases the heating medium is separated from the respective layer that overlies a wall of the dishwasher. This separated reservoir 7 is important to the operation of the DE '882 structure, and Applicant submits that any suggestion to modify the structure in view of the DE '567 reference is necessarily derived in hindsight in view of Applicant's own disclosure.

Applicant thus respectfully submits that the rejection of independent claim 37 is misplaced.

Applicant submits that the proposed combination similarly falls short of the claimed invention defined in independent claim 32. In this context, the Office Action maintains that DE '882 could have been modified in view of DE '567. As noted above, Applicant respectfully submits that such a modification is beyond the capabilities of one of ordinary skill in the art. Moreover, as discussed previously, JP '180 is merely directed to an operating program for a dishwasher and provides no suggestion of a variable heat arrangement for influencing the condensation capabilities of a wall of the dishwasher. JP '180 thus also does not correct the deficiencies noted with regard to DE '882 and DE '567.

The dependent claims should be allowable for the same reasons and also because they recite additional patentable subject matter. The additional secondary references do not overcome the deficiencies noted with regard to DE '882 and DE '567.

Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

In view of the above, allowance of Claims 22, 25-27 and 29-39 is respectfully requested. If the Examiner has any questions regarding this response, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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